

LIPSON & O'SHEA LEGAL GROUP

Beachcliff Market Square
19300 Detroit Avenue - Suite 202
Rocky River, Ohio 44116
(440) 356-2700
fax (440) 331-5401
www.lipsonoshea.com

February 20, 2015

VIA ECF AND EMAIL
(Failla_NYSDChambers@nysd.uscourts.gov)
Hon. Katherine Polk Failla
United States District Judge
United States District Court
Southern District of New York
40 Foley Square - Room 2103
New York, New York 10007

re: Forni v. Resnick
Case No. 1:14-cv-09458-KPF
Request for informal conference on discovery
dispute

Dear Judge Failla:

I am counsel for the Plaintiff Nicole Forni in this action. Pursuant to Local Rule 37.2 and Rule 3C of Your Individual Rules of Practice in Civil Cases, this is a request for an informal conference on what I believe is a discovery dispute. Here is a summary of that discovery dispute.

On January 12, 2015, I transmitted to all current defense counsel copies of internet sites where we believe defendant Joshua Resnick ("Defendant Resnick") is perpetuating false and defamatory factual statements about this case - all in an attempted effort to raise money for his legal defense. I pointed out to those defense counsel some of the following false facts (some of these false facts were presented to you verbally at the January 6, 2015 Initial Case Management Conference):

1. Ms. Forni was not paid for the photo session;
2. Ms. Forni is not an "implied nude model;"
3. Ms. Forni is not looking for \$500,000;
4. Ms. Forni was not told the photos would be for sale as "stock photography;" and
5. Ms. Forni did not sign a valid release.

I also suggested that we convert any pending motions to dismiss into summary judgment motions that can include all of the facts, disputed and undisputed, for this Court's consideration. In fact, I pointed that Defendant Resnick's current on-line actions (which have occurred after this lawsuit was filed and after the January 6, 2015 Initial Case Management Conference) had the effect of defaming my client by further fabricating false facts and/or creating an implication that Ms. Forni invites pornographic/adult use of her photos.

In that regard, and given the fact that a number of the defendants, have, in our opinion, made factual false statements in the pending motions to dismiss, I attempted to approach counsel for the defendants to allow me to depose Defendant Resnick (and a mysterious "[l]other person" who Defendant Resnick is now claiming was there at the photo shoot referred to in the complaint). I also asked to depose a 30B5 representative of Defendant Shutterstock (in light of the complaint's and Mr. Resnick's factual allegations of a violation of the Terms of Service Agreement [attached to the complaint]). Further, I also further inquired about getting information from Defendant Shutterstock (we had been asking for months) on the "who, when and how much" data on the photos that were purchased through Defendant Shutterstock.

On January 12, 2015 I transmitted an email to all defense counsel pointing out these issues and invited all of them to join me in a joint conference call to meet and confer on this issue. That 70-minute phone conference call occurred on January 21, 2015. Lastly, I sent a final email to the same group of defense counsel on February 9, 2015 requesting that those defense counsel reconsider their refusal to permit any limited discovery in this case and convert the motions to dismiss into motions for summary judgment. I believed in good faith that allowing limited discovery and converting the current motions to motions for summary judgment would assist this Court in sorting out what is and what is not factually true or false for purposes of any dismissal motions. None of the defense counsel would reconsider their refusals. In that regard, I believe we have met the good faith meet and confer requirements in Rule 3C of Your Individual Rules of Practice in Civil Cases

Accordingly, I am requesting that this Court consider setting an informal conference to discuss these discovery issues. I also respectfully request that you permit us to conduct this conference through a conference call. In that regard, I look forward to the Court's response to this letter.

Sincerely,

/s/ Michael J. O'Shea

Michael J. O'Shea
(OH bar# 0039330 - admitted pro hac vice)

cc: to all counsel of record by email
to all parties by ECF System